



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
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Date: December 1, 2016
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-823-7010 / Andrew.Gulizia@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 16-245348 AD

GENERAL INFORMATION

Applicant: Brint Riggs
Studio Eccos Architecture
5835 N Omaha Ave.
Portland, OR 97217

Property Owners: Jennifer Pratt and Michael Wetter
3620 NE 71st Ave.
Portland, OR 97213

Site Address: 7065 NE 8th Ave.

Legal Description: TL 10100 0.14 ACRES, SECTION 14 1N 1E
Tax Account No.: R941141050
State ID No.: 1N1E14BB 10100
Quarter Section: 2331
Neighborhood: Woodlawn, contact Anjala Ehelebe at 503-388-5004
Business District: North-Northeast Business Assoc, contact at chair@nnebaportland.org
District Coalition: Northeast Coalition of Neighborhoods, contact Zena Rockowitz at 503-388-5070

Zoning: R5h – Single-Dwelling Residential 5,000 with Aircraft Landing (“h”) overlay zone

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes to construct a new single-dwelling house on this site, leaving the existing house toward the back of the lot as an accessory dwelling unit (ADU). For the proposed new house, the applicant is requesting approval of an Adjustment to Zoning Code Section 33.110.220 to reduce the required setback from the south side lot line from 5 feet to 1

foot for the garage (which will be mostly below grade) and rooftop patio, from 5 feet to 3.5 feet for building areas above the garage, and from 4 feet to 2 feet for a roof eave.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Section 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 6,495-square-foot site is located on the west side of NE 8th Avenue, between NE Morgan Street and NE Bryant Street. The site is developed with a one-story, single-dwelling residence toward the back of the lot, which the applicant proposes to retain as an ADU. Neighboring properties are developed with a mix of one- and two-story houses. An industrial use on the south side of NE Bryant Street is located one block south of the site.

Zoning: The R5 zoning designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. However, in residential zones such as R5 the base zone height limits apply instead of the height limits of the "h" overlay. This proposal complies with the 30-foot height limit of the R5 zone.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal" was mailed October 13, 2016. The following Bureaus responded with no concerns:

- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4); and
- Site Development Review Section of BDS (Exhibit E-5).

The following Bureaus responded with information on requirements that will apply at the time of building permit review, but with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2); and
- Life Safety Review Section of BDS (Exhibit E-6).

Neighborhood Review: In response to mailed "Notice of Proposal," one e-mail in opposition to the proposal was received from the neighboring property owner to the south (Exhibit F-1). The neighbor raised several concerns:

- The Adjustment would impact his ability to expand his house to the north and west.
- The closeness of the proposed windows, patio, and garage would impact livability and privacy.
- His lot is already shaded by trees, and reducing the ambient light from the north would negatively impact his house and garden.
- The rain garden in his north side yard may impact the new garage – will he be asked to remove it?
- Maintaining the new house may require access from his yard, impacting his garden.
- Noise from his house may impact the new neighbors more with the reduced setback.

Staff response: Approval of the proposed Adjustment will not require the neighboring property owner to limit his own addition plans. If the neighbor's addition meets the minimum setback and other requirements, the addition would be allowed outright. If the neighbor requests

Adjustment Review, the specific proposal would be evaluated against the Adjustment approval criteria in a public process.

Approval of the Adjustment will not require the neighbor to allow access to his property for any reason. (In fact, the applicant will be required to construct a solid fence on their side of the lot line as a condition of approval.) No City code would require the neighbor to remove his rain garden as a result of this Adjustment. The applicant and the owner of the subject property are advised to consider these issues in their construction and maintenance plans for the new house.

Potential noise impacts caused by a neighbor of a development site, rather than from within a the development site, are not relevant to the approval criteria for Adjustments.

Issues of light and privacy are relevant to the approval criteria for Adjustments, and are discussed below. Specific conditions of approval related to the neighbor's privacy are included with this decision.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

- A.** Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant is requesting an Adjustment to the minimum side setback requirement. The purpose of the setback requirement in the R5 zone is stated in Zoning Code Section 33.110.220.A:

Purpose. *The setback regulations for buildings and garage entrances serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of houses in the city's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The proposed Adjustment will allow a garage to be constructed 1 foot from the south side lot line. (The garage roof, which includes a patio, will be approximately 20 inches above the adjacent grade on the abutting lot to the south.) Within the 5-foot setback from the south lot line, the applicant also proposes a 9.5-foot-long dining room wall on the ground floor, posts supporting a second-floor cantilever, a 13.33-foot-long wall of a second-story cantilevered bedroom, and an 8-foot-wide uncovered porch accessed from that second-floor bedroom. These elements are proposed be set back between 3.5 feet and 4.5 feet from the south side lot line, and will be less than 20 feet above grade, which is well under the 30-foot building height limit in the R5 zone. All other portions of the proposed house will comply with the minimum 5-foot setback requirement from the south lot line, and most of the bulk

of the new house will be set back approximately 12.5 feet from the south side lot line. (Exhibits E-1 through E-5.)

Most of the proposed garage will be below grade, and the portions of above-grade living space subject to this Adjustment will be set back a majority of the required distance and will be fairly modest in size. The setback Adjustment will allow only a relatively small area of development within the south side setback, compared to the total length of the new house and to the total length of the setback area. The proposed structure will be 40 feet long from front to back, but only 20 feet of that building length (50%) will encroach within the 5-foot setback from the south lot line. Furthermore, the south side lot line is 128 feet long, so the 20-foot-long building area that will encroach within the 5-foot south setback will be only 16% of the total south side setback area. A large majority of the setback area from the south side lot line will remain open and undeveloped, maintaining light, air, fire safety, the general building scale and placement of houses in the neighborhood, the physical relationship between residences, and neighborhood compatibility. The Fire Bureau reviewed the proposal and responded with no concerns (Exhibit E-4). The location of the proposed structure will still allow fire fighting access from three sides. The new house will be north of the side lot line subject to the setback Adjustment, so while ambient light may be affected to some extent, approval of the Adjustment will not increase shading on the neighboring lot.

Staff finds these impacts would be modest even if the neighboring house to the south, which is currently set back approximately 10 feet from its north lot line, is expanded to the north in the future. If the neighboring home were expanded to its 5-foot side setback limit, there would still be 8.5 feet of separation between the neighbor's home and the closest above-ground living space area in the house subject to this Adjustment. (Though most of the bulk of the house subject to this Adjustment will be set back approximately 12.5 feet from the south side lot line.) If the neighboring home is proposed to expand to less than 5 feet from the side lot line, that specific proposal would be evaluated against the Adjustment approval criteria in the same manner as this review.

The new house will meet the front setback requirement, and the open front yard is not affected by the side setback Adjustment. The side setback Adjustment will help maximize the outdoor area that can be shared between residents of the new house and the ADU on this site. The proposed garage will be set back almost 29 feet from the street lot line, so the proposal will not cause a car parked in front of the garage to overhang the street or sidewalk. Driver visibility when backing onto the street will not be affected by this Adjustment.

The owner of the abutting property to the south raised concerns about privacy (Exhibit F-1). Staff finds that a solid fence along the south side lot line, as illustrated in the applicant's plans (Exhibit C-2), will effectively screen views and mitigate privacy impacts from the patio on top of the garage roof and from those ground floor windows that are slightly less than 5 feet from the lot line. To ensure that a fence is included in the final plans, a condition of approval will require that the building permit plans illustrate a fully sight-obscuring fence to be constructed on the applicant's side of the lot line. To maximize privacy, the fence will be required to be at least 5'10" feet in height measured from the surface of the patio on the garage roof (4 inches taller than proposed by the applicant in Exhibit A-3).

Staff finds the bedroom windows and bedroom porch on the second floor, which are both proposed to be 3.5 feet from the south side lot line in the applicant's plans (Exhibit C-2), may impose privacy impacts on the adjacent neighbor's house and side yard which are not equally consistent with the purpose of the 5-foot setback requirement. The fence along the south side lot line will not screen views from these second-story windows or from this second-story porch. In order to find that the proposal equally meets the privacy purpose of the 5-foot setback requirement, conditions of approval will require that the second-story porch is set back to at least 5 feet from the side lot line, and that south-facing second-story windows which are less than 5 feet from the side lot line are designed for privacy (either with translucent glass or as clerestory windows).

With these conditions of approval, staff finds the proposed Adjustment equally meets the intent of the setback regulation. This criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Because the site is located in a single-dwelling residential zone, the applicant must demonstrate that the proposal will not detract from the livability or appearance of the surrounding residential area. The proposed Adjustment to the side setback requirement does not negatively affect the design of the house, which is fairly traditional and compatible with the older homes in this established neighborhood. As discussed in the findings for approval criterion A, above, the above-ground portions of the house that will benefit from the side setback Adjustment will be fairly modest in size, with most of the bulk of the new house set back further from the side lot line than required. Also as discussed above, conditions of approval will require a sight-obscuring fence along the south lot line, privacy-enhancing revisions to the south-facing bedroom windows on the second floor, and an increased setback (to 5 feet) for the second floor porch. These conditions are imposed in order to limit privacy and livability impacts on the adjacent neighbor. For these reasons, and with these conditions of approval, staff finds this criterion is met.

- C.** If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: As only one Adjustment is being requested, this criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: As discussed in the findings for approval criterion A, conditions of approval will require a sight-obscuring fence along the south lot line, privacy-enhancing revisions to the south-facing bedroom windows on the second floor, and an increased setback (to 5 feet) for the second floor porch. Staff finds these conditions of approval will effectively mitigate potential negative impacts by preventing the reduced setback from affecting the adjacent neighbor’s privacy. With these conditions of approval, staff finds this criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the official zoning maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on site, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of

Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The proposed setback Adjustment equally meets the intent of the setback regulation, and will not significantly detract from the livability and appearance of the surrounding residential neighborhood. Conditions of approval will mitigate potential impacts from the reduced setback on the neighboring lot. The applicant has demonstrated that the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.110.220 to reduce the required setback from the south side lot line from 5 feet to 1 foot for the garage and rooftop patio, from 5 feet to 3.5 feet for building areas above the garage, and from 4 feet to 2 feet for a roof eave, per the approved plans, Exhibits C-1 and C-2, signed and dated November 28, 2016, subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 and C-2, except as modified in Conditions B through D below. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-245348 AD."
- B. The applicant is required to construct a fully sight-obscuring fence on the applicant's side of the south lot line, and this fence must be illustrated on the final building permit plans. The location and width of the fence must at least be as shown in the south elevation in Exhibit C-2, though it may extend further to the west if desired. The fully sight-obscuring fence must be at least 5'10" feet in height measured from the patio surface on the garage roof. The building permit plans must include a section drawing showing the fence height from both the patio surface and from the adjacent grade to the south. (Note: The fence may trigger review for building code compliance depending on the height.)
- C. The outer edges of any porch structure attached to the second floor of the house must be set back at least 5 feet from the south side lot line.
- D. Any south-facing second floor windows which are less than 5 feet from the south side lot line must either have translucent glass only or be designed as clerestory windows.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on November 28, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 1, 2016

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on September 19, 2016, and was determined to be complete on October 10, 2016.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the

application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on September 19, 2016.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120 days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: February 7, 2017.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on December 15, 2016**, at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment

Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, the final decision may be recorded on or after **December 16, 2016**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

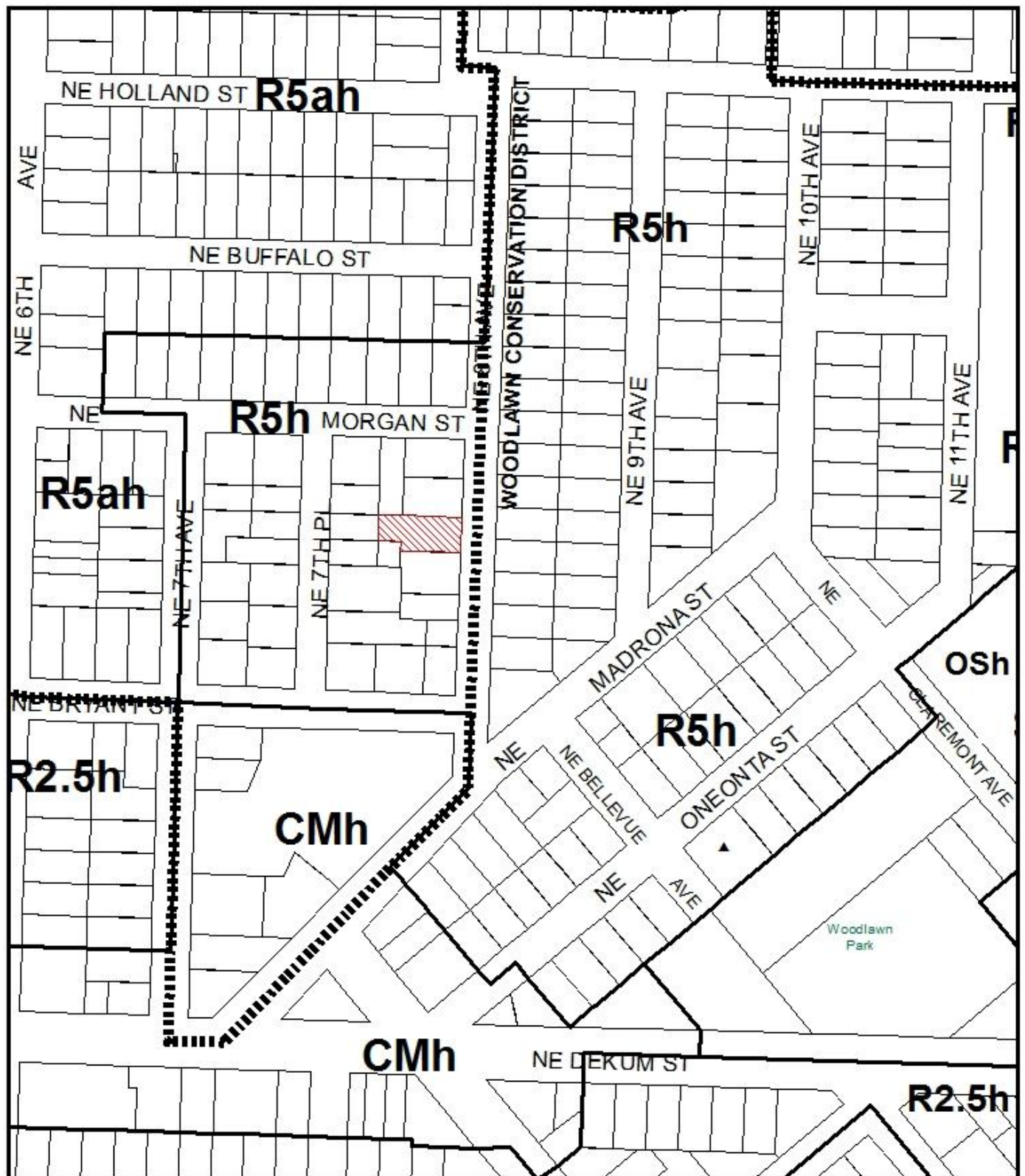
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Approval criteria responses
 - 2. Response to incompleteness determination letter, received October 10, 2016
 - 3. Revised approval criteria responses, received October 10, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. Building elevations for new house (attached)
 - 3. Basement floor plan for new house

4. First floor plan for new house
 5. Second floor plan for new house
 6. Floor plans for existing house to be retained as ADU
 7. Building elevations for existing house to be retained as ADU
 8. Large-sized site plan
- D. Notification Information:
1. Mailing list
 2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
 2. Portland Bureau of Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Life Safety Review Section of BDS
- F. Correspondence:
1. E-mail in opposition from Casey Cunningham, received November 3, 2016
- G. Other:
1. Original LU application form and receipt
 2. Incompleteness determination letter, dated September 29, 2016

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

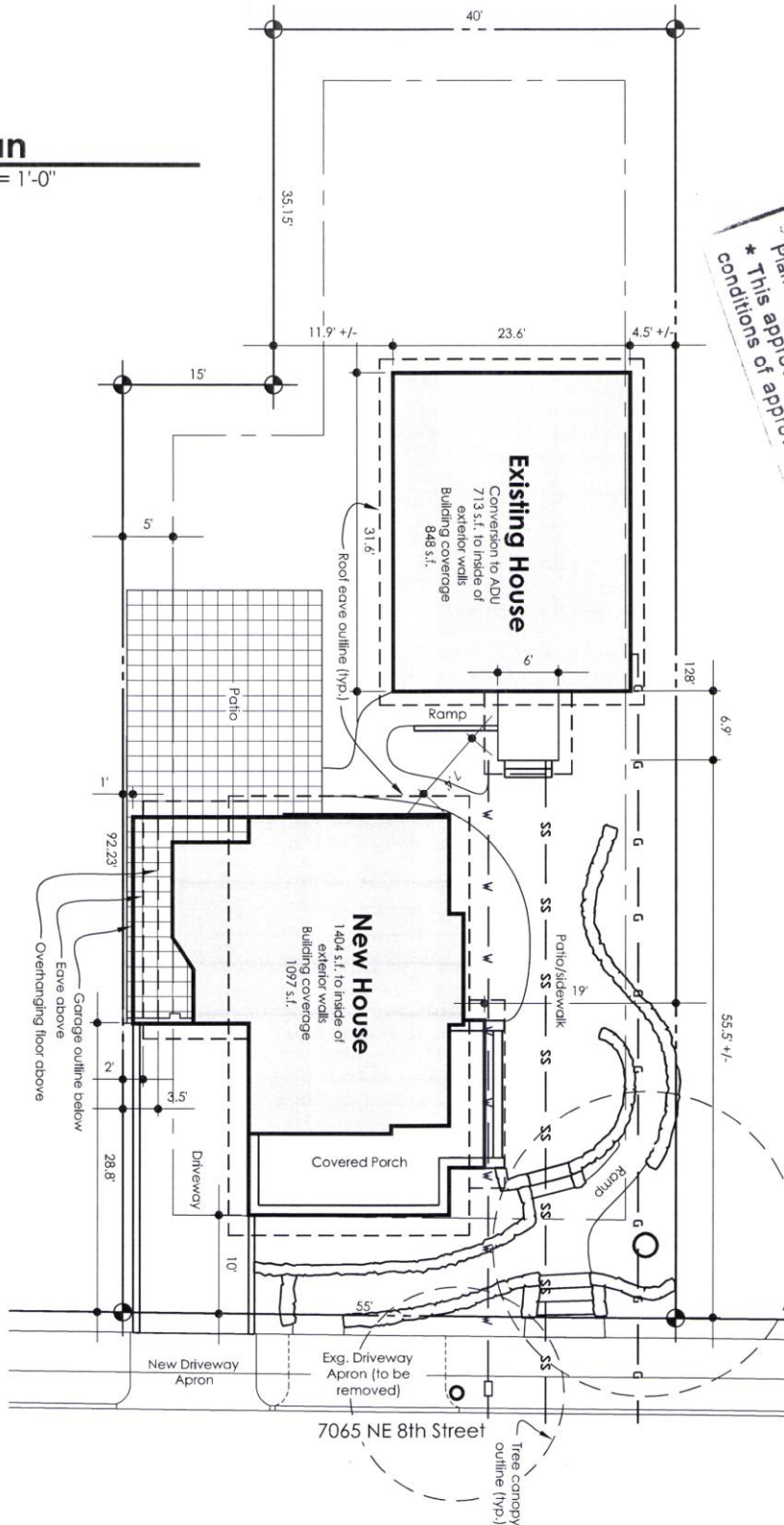


- Site
- Conservation Landmarks

File No. LU 16-245348 AD
 1/4 Section 2331
 Scale 1 inch = 200 feet
 State_Id 1N1E14BB 10100
 Exhibit B (Sep 21, 2016)

Site Plan

Scale: 1/16" = 1'-0"



studio
eccos
architecture

5835 N. Omaha Avenue
Portland, OR, 97217
503-701-4494

Approved
City of Portland - Bureau of Development Services
Date 11/28/16
This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

RECEIVED
OCT 10 2016
By

Pratt-Wetter ADU - Adjustment (Rev. 1)

Design 1m ♦ 2016.10.04

7065 NE 8th Street



LU 16-245348 AD
Exhibit C-1

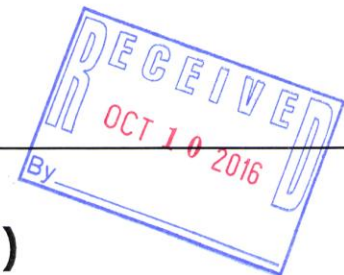
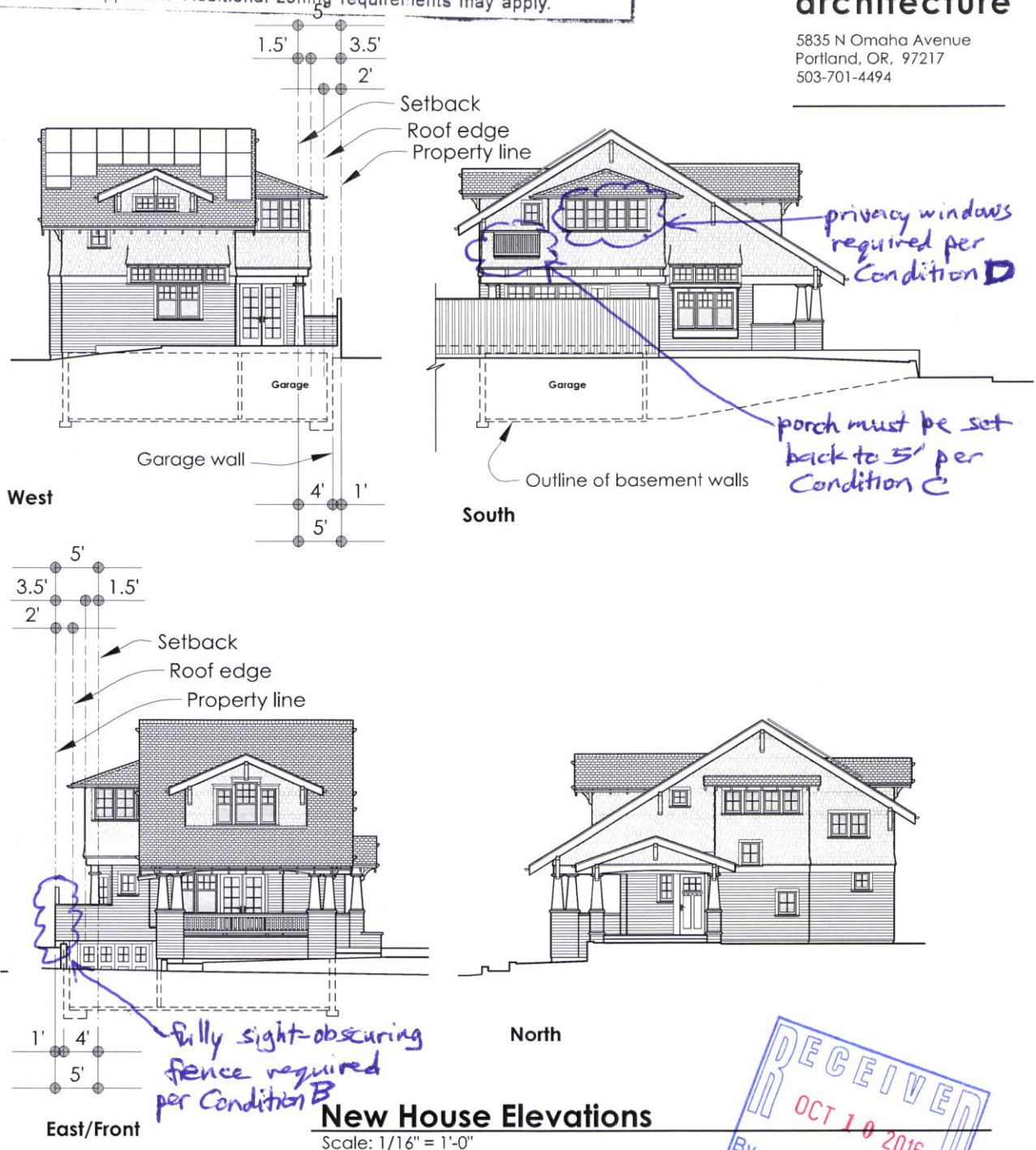
Approved
 City of Portland - Bureau of Development Services

Planner A. Gulizia Date 11/28/16

* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

**studio
eccos
architecture**

5835 N Omaha Avenue
 Portland, OR, 97217
 503-701-4494



Pratt-Wetter ADU - Adjustment (Rev. 1)

Design 1m ♦ 2016.10.04
 7065 NE 8th Street

*LU 16-245348 AD
 Exhibit C-2*